

SPECIAL PUBLIC NOTICE

FOR ESTABLISHMENT OF REGIONAL CONDITIONS FOR NATIONWIDE AND GENERAL PERMITS

LOS ANGELES DISTRICT

Public Notice/Application No.: 98-50449-BAH

Comment Period: July 21, 1999 through September 7, 1999

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Proposal

On July 21, 1999, the U.S. Army Corps of Engineers published a notice in Part III of the FEDERAL REGISTER announcing its proposal to issue 5 new Nationwide Permits (NWP), and modify 6 existing NWPs to replace NWP 26, the expiration date of which has been extended to 30 December 1999, or the effective date of the new and modified NWPs, whichever comes first. The proposed NWPs are activity-specific and authorize certain activities in non-tidal waters of the United States that have minimal adverse effects on the aquatic environment. In this Federal Register notice, the Corps also proposed to add 3 new general conditions to the NWPs to increase protection of the aquatic environment. The proposed NWP general conditions will restrict or prohibit the use of certain NWPs in waters of the United States within 100-year floodplains, impaired waters, and designated critical resource waters. Information on the new and modified NWPs can be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>. In addition to the NWP general conditions, division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or State. Regional conditions are an important mechanism to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., States or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. Included in this public notice are the proposed regional conditions currently under consideration by the South Pacific Division for Los Angeles District. The Los Angeles District is seeking comments on the proposed regional conditions and modifications of existing and proposed nationwide permits, and seeking comments on the need for additional regional conditions to help ensure that impacts authorized by the proposed and modified NWPs are minimal. If the Division Engineer approves any regional conditions, those regional conditions will become effective when the public notices announcing the final issued NWPs are published. Unless otherwise noted, all proposed regional conditions listed in this notice are applicable for activities in Los Angeles District. Interested parties are invited to provide their views on these proposals which will become a part of the record and will be considered in the decision. These modifications and regional general conditions will be issued or denied under Section 404(e) of the Clean Water Act. Comments pertinent to the proposed regional conditions should be sent to U.S. Army Corps of Engineers, Los Angeles District, Ventura Field Office,

2151 Alessandro Drive, Suite 255, Ventura, California 93001. Comments are due by **September 7, 1999**. Alternatively, comments may be sent electronically to: bhenderson@spl.usace.army.mil

Evaluation Factors

The decision whether to establish modifications of new and existing nationwide and general permits, and regional general conditions, will be based on an evaluation of the probable impact, including cumulative impacts, of the proposals on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposals must be balanced against their reasonably foreseeable detriments. All factors relevant to the proposals will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands and other special aquatic sites, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if any of the proposals could reasonably be expected to result in a discharge of dredged or fill material, the evaluation of the proposal will include application of the EPA Guidelines (40 CFR 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of these proposals. All comments received will be considered by the Corps of Engineers to determine whether to modify, establish or not establish any of these proposals. To make these decisions, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, the other public interest factors listed above, and general workload constraints. Comments are used in the preparation of an Environmental Assessment pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposals.

Preliminary Review of Selected Factors

Water Quality - Any permittee in Los Angeles District conducting an activity under any nationwide or regional general permit is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the appropriate California Regional Water Quality Control Board or the Arizona Department of Environmental Quality, or, for activities conducted on lands under their control, by the White Mountain Apache Tribe, unless the State water resources control boards or the White Mountain Apache Tribe certify the general permit. For any proposed activity on other Tribal land that is subject to Section 404 jurisdiction, the applicant would be required to obtain water quality certification from the U.S. Environmental Protection Agency. The District Engineer hereby requests the input from the California State Water Resources Control Board, local Regional Water Quality Control Boards, the U.S. Environmental Protection Agency, the Arizona Department of Environmental Quality, and the White Mountain Apache Tribe on the proposed modifications and regional conditions.

Coastal Zone Management - Any activity conducted within the Coastal Zone or that may affect the Coastal Zone must be certified that it is in compliance with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management Program. The District Engineer hereby requests the California Coastal Commission's input on the proposed modifications and regional conditions.

Cultural Resources - Prior to issuance of any Department of the Army permit which authorizes

work that may impact a cultural resource, the Corps must ensure the activity is in compliance with Section 106 of the National Historic Preservation Act. Because general permits as a rule, including the proposed modifications and conditions, do not recognize any potential impacts until an application is presented, such compliance must be determined during the case-specific review process for that application.

Endangered Species - Preliminary determinations indicate those actions likely to be proposed for authorization by the new nationwide permits, and/or subject to the proposed modifications and/or conditions, will likely affect federally listed endangered or threatened species, or their designated critical habitat. Discussions will be conducted with regional U.S. Fish and Wildlife Service and National Marine Fisheries Service offices to address compliance with the Endangered Species Act. Such discussions may result in formal consultation for the proposed nationwide permits or regional conditions pursuant to Section 7 of the Endangered Species Act, and potentially lead to one or more specific or programmatic biological opinions.

Public Hearing - Los Angeles District conducted public meetings in Los Angeles and Phoenix in September 1998 to provide additional information pertaining to the proposed modifications and regional conditions, and to receive comments from the public. However, any person may request, in writing, within the comment period specified in this notice, that an additional public hearing or meeting be held to consider these proposals. Requests for a public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Regional Conditions and Modifications to New and Existing Nationwide Permits

1. For coastal watersheds from the southern reach of the Santa Monica Mountains in Los Angeles County to the community of Gorda in Monterey County, Los Angeles District (LAD) is proposing that all road crossings must employ a bridge crossing design that ensures passage and/or spawning of steelhead (*Oncorhynchus mykiss*) is not hindered in any way. The following draft proposed crossing designs were developed by the National Marine Fisheries Service. These draft proposals call for bridge designs that either span the stream or river, including designs for pier- or pile-supported spans, use a bottomless arch culvert simulating the natural streambed (i.e., substrate and streamflow conditions in the culvert are similar to natural streambed conditions), use an embedded round metal or concrete box culvert design simulating the natural streambed, use a nonembedded culvert with a slope not exceeding 0.5 percent, use a baffled culvert design if the slope exceeds 0.5 percent, or use a structure with a fishway, unless it can be demonstrated that the stream or river does not support resources conducive to the recovery of steelhead, including migration of adults and smolts. This proposal would also exclude approach embankments into the main channel unless they are determined to have minimal effect on steelhead.
2. For the State of Arizona and the Colorado and Mojave desert regions of California in Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges), LAD is proposing that no nationwide permit or other general permit, except Nationwide Permits No. 3, Maintenance, No. 27, Stream and Wetland Restoration Activities, No. 30, Moist Soil Management for Wildlife, and No. 31, Maintenance of Existing Flood Control Projects, or other nationwide or regional general permits that specifically authorize maintenance of previously authorized structures or fill, can be used to authorize the discharge of dredged or fill material into a jurisdictional wetland. It is the position of LAD Regulatory Branch that wetlands in Arizona and the desert regions of

California are sufficiently rare that the loss of any wetland not associated with a flood control facility or mitigation site should require site-specific review under the Section 404(b)(1) Guidelines and public interest review factors to fairly evaluate the impacts of the proposed activity on aquatic functions and values.

3. For all other projects requiring discharge of dredged or fill material in any special aquatic site as defined at 40 CFR Part 230.40-45 (sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs, and riffle-and-pool complexes), LAD District is proposing that the applicant must notify the District Engineer in accordance with the Notification general condition.
4. For all projects requiring discharge of dredged or fill material in any perennial stream or river, or in streams or rivers that receive a persistent or regular discharge of flows from treatment plants, or urban, agricultural or other sources, LAD is proposing that the applicant must notify the District Engineer in accordance with the Notification general condition. If the project impacts greater than 500 linear feet of the watercourse, the project would not be eligible for authorization by general permit, except under Nationwide Permits No. 3, Maintenance, No. 27, Stream and Wetland Restoration Activities, No. 31, Maintenance of Existing Flood Control Projects, No. 32, Completed Enforcement Actions, and No. 33, Temporary Construction, Access and Dewatering, or other nationwide or regional general permits that specifically authorize maintenance of previously authorized structures or fill.
5. For all projects requiring discharge of dredged or fill material in any intermittent stream or river (watercourses that may continue to flow for days, weeks or months after cessation of rainfall due to groundwater, snowmelt, seasonal urban or agricultural sources, etc.), LAD is proposing that the applicant must notify the District Engineer in accordance with the Notification general condition if the project impacts between 500 and 1,000 linear feet of the watercourse. If the project impacts greater than 1,000 linear feet of the watercourse, the project would not be eligible for authorization by general permit and the applicant would have to apply for an individual permit.
6. For all projects requiring discharge of dredged or fill material in any jurisdictional ephemeral stream (generally has flowing water only during, and for a short duration after, storm events in a typical year, and generally with a streambed located above the water table year-round) in any coastal watershed that conveys flows with enough regularity that the floral community is influenced by such flows (i.e., is stream-oriented), the applicant must notify the District Engineer in accordance with the Notification general condition if the project impacts greater than 500 linear feet of the watercourse.
7. For all projects requiring discharge of dredged or fill material in any waters of the U.S. within the Santa Monica Mountains watersheds in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Coast Highway on the south, LAD is proposing that the applicant must notify the District Engineer in accordance with the Notification general condition.
8. For all projects requiring discharge of dredged or fill material in any waters of the U.S. within the Santa Margarita River watershed in Riverside and San Diego counties, LAD is proposing that the applicant must notify the District Engineer in accordance with the Notification general condition.

9. For all projects requiring discharge of dredged or fill material in the Tijuana River or adjacent wetlands in San Diego County, LAD is proposing that the applicant must notify the District Engineer in accordance with the Notification general condition.
10. LAD is proposing that bank stabilization projects in the San Luis Obispo Creek watershed in San Luis Obispo County would not be eligible for authorization by general permit and the applicant would have to apply for an individual permit. This is due to a determination that the watershed has been subject to substantial adverse cumulative effects from past bank stabilization projects.
11. For all projects proposed for authorization by nationwide or regional general permits where prior notification to the District Engineer is required, LAD is proposing that applicants provide to the Corps color photographs or photocopies of the project area taken from representative points documented on a site map. Pre-project photographs and the site map would be provided with the permit application. Photographs should represent conditions typical or indicative of the resources prior to impacts. This would allow the Regulatory project manager to make preliminary determinations of existing conditions and could alleviate the need for more in-depth review or site visits for projects with minimal resource values.
12. For all projects authorized by nationwide or regional general permits where prior notification to the District Engineer is required, or where formally authorized under any general permit, LAD is proposing that all permittees must provide written certification to the Corps that they have read and understand the permit, and will comply with all special conditions placed on the particular project, as well as all pertinent nationwide permit general conditions, and all pertinent regional general conditions, prior to initiation of project construction. If implemented, LAD would provide the form ready for signature by the permittee.
13. On November 25, 1997, LAD established a regional general condition that required notification to the Corps for all projects impacting any vernal pool and required an individual permit for projects impacting greater than 0.5 acres of vernal pool basin. The proposal considered herein would supercede the current regional condition relating to vernal pools. The criteria contained within that regional general condition for definition of vernal pools would continue to apply to this proposal.

LAD Regulatory Branch notes that southern California has experienced a substantial documented loss of vernal pools. It is the position of LAD Regulatory Branch that vernal pools are sufficiently rare that the loss of or impact to any vernal pool should be significantly mitigated and/or require site-specific review under the Section 404(b)(1) Guidelines and public interest review factors to fairly evaluate the impacts of the proposed activity on aquatic functions and values. Various studies have noted that vernal pools in different regions in the State are subject to varying degrees of impact and threat as well as varying levels of potential protection through conservation efforts. Therefore, based on information contained in these documents, LAD is proposing the following:

- (a) For the Santa Barbara Region (southern and western Santa Barbara County from the Santa Maria area south to western Ventura County adjacent to Ojai and the Ventura River drainage, upper Santa Clara River Basin, and Simi Valley), LAD is proposing that

no discharges of dredged or fill material into any vernal pool be authorized by any general permit.

(b) For the western Riverside County region (western part of Riverside County including the Perris Basin of the lower San Jacinto River Valley, several small basins in the area between Temecula and Lake Skinner, the Santa Rosa Plateau area southwest of Lake Elsinore, and Hidden Lake pool in the montane zone of the San Jacinto Mountains), LAD is proposing that no discharges of dredged or fill material into any vernal pool be authorized by any general permit.

(c) For the San Diego Region (along the coast from Camp Pendleton to the Otay Mesa and extending inland in a continuous belt to about the City of Ramona, the Cuyamaca Lake area, and the Lake Henshaw area), LAD is proposing to limit authorization by general permit to those projects that can demonstrate minimal adverse effects with direct impacts to vernal pool basins or Mima mound complexes up to 0.25 acres. Any direct impacts to vernal pool basins or Mima mound complexes must be mitigated at a ratio of 5:1 for basins or Mima mound complexes, and must further mitigate project impacts by inclusion of the mitigation basin(s) or complex watershed as part of the mitigation, but does not apply toward the 5:1 acreage ratio. Further, mitigation acreage submitted for consideration must be of a similar vernal pool type and/or within the same soil series, and within the same general region, unless it can be demonstrated that preservation of another type of vernal pool may be more advantageous to the resource (i.e., for those situations where pools are much more restricted than others or may be subject to greater threat of impact). For instance, direct impacts of 0.2 acres to San Diego Claypan vernal pool or pools would require 1.0 acre of San Diego Claypan vernal pool basin(s) plus the basin's watershed.

Los Angeles District is proposing the following modifications to the proposed replacement nationwide permits.

14. For Nationwide Permit 39, Residential, Commercial, and Institutional Developments, LAD is proposing to lower the upper acreage threshold from three acres to two acres. When NWP 26 was reauthorized in December 1996, the upper threshold was lowered from ten acres to three acres. Regulatory Branch observed that various development projects were submitted subsequent to this reauthorization with impacts minimized to a substantial degree to achieve favorable consideration under the new NWP 26. Most projects for which authorization was requested under the revised NWP 26 received verification of authorization. In fact, most of these projects requested authorization for impacts to aquatic resources of less than two acres. Therefore, Los Angeles District believes it is prudent to have an upper threshold of two acres for residential, commercial, and institutional development projects as a means of ensuring minimal impacts to aquatic resources through avoidance and minimization of impacts.
15. For Nationwide Permit 43, Stormwater Management Facilities, LAD is proposing lowering the upper acreage threshold for discharges of dredged or fill material in nontidal wetlands or other special aquatic sites from two acres to 0.25 acres for construction of new facilities. Regulatory Branch recognizes that stormwater management facilities will have certain design constraints that may indicate their placement in a particular location, and that such placement will likely impact drainages including wetlands or other special aquatic sites. However, Regulatory Branch believes that many projects also have certain discretion in such

placement. This discretion must be utilized to avoid special aquatic sites of all types.

16. For Nationwide Permit 44, Mining Activities, LAD is proposing to exclude all mining activities in all special aquatic sites, including wetlands.

Los Angeles District is proposing the following modifications or regional conditions to the proposed modifications to the existing Nationwide Permits.

17. For Nationwide Permit 12, Utility Line Activities, LAD is proposing requiring that trenches dug for placement or removal of utility lines will be backfilled only with native material from the trench when the material is of suitable quality. When the material is not suitable for bedding of the utility line and nonnative material is utilized, the project design must incorporate means to prevent any potential draining of any wetland or impounded waterbody, and must not have any other ancillary adverse effect on the hydrology of the jurisdictional waters. In addition, the upper 8 to 16 inches of material must be stored separately from other material removed from the trench. This excavated material will be reserved for surface replacement in the work area to the depth it was excavated. Excess material remaining from the trench shall be removed to an approved upland site (i.e., discharged in areas that are not subject to Corps jurisdiction and would not otherwise be reasonably expected to be washed into a waters of the U.S.).

Further, LAD is proposing limiting discharges of dredged or fill material into waters of the U.S. for purposes of construction, maintenance or expansion of any utility line substation facility, or ancillary features, to a one-time use of this NWP.

18. For Nationwide Permit 40, Agricultural Activities, LAD is proposing to exclude all activities that discharge dredged or fill material into perennial and intermittent watercourses.

LAD is proposing lowering the upper acreage threshold for impacts to nontidal wetlands on agricultural land from two acres to one acre.

Per paragraph 13 above, this NWP would not apply in the western Riverside County or Santa Barbara regions if vernal pools would be impacted. Further, impacts to vernal pools or Mima mound complexes are limited to 0.25 acres in the San Diego County region.

LAD is proposing excluding construction of building pads for farm buildings if the construction is proposed for any special aquatic site, regardless of status pertaining to former or current agricultural production, unless the hydrology of the site has been sufficiently modified to prevent the return of the site to functions and values inherent to the site prior to modification for agricultural purposes.

For any installation of drainage systems under this NWP, LAD is proposing that the applicant demonstrate compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act) if the drainage system empties into any waters of the U.S.

For additional information please call Bruce Henderson of my staff at (805) 641-1128. This public notice is issued by the Chief, Regulatory Branch.